

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance	• •	Administration	• •	Executive/Legal	• •	Enforcement
(916) 322-5662		322-5660		322-5901		322-6441

June 11, 1985

Thomas C. Lonergan
Attorney at Law
535 Chestnut Street
P.O. Box 10
Fort Bragg, CA 95437-0010

Re: Your Request for Advice
Our File No. A-85-110

Dear Mr. Lonergan:

Thank you for your request for advice on behalf of Mrs. Pat Tilley, Director of the Mendocino Coast Recreation and Park District ("District") concerning her obligations under the Political Reform Act of 1974.^{1/}

FACTS

You stated the situation in your letter and asked your question as follows:

... Mrs. Pat Tilley is a Director of the Mendocino Coast Recreation and Park District, a special district organized under the Public Resources Code Section 5780 et seq. In 1981, while Mrs. Tilley was a Director, said district became owners of certain real property by virtue of a Coastal Conservancy Grant, commonly referred to as the Mendocino Coast Botanical Gardens. These gardens were sold by parties who retained ownership of real property surrounding said gardens for future development.

The district leased said gardens to a non-profit corporation, the Mendocino Coast Botanical Gardens

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

Preservation Corporation, which has obtained tax exempt status, both federal and state. Pat Tilley is a Board member of said non-profit corporation with 9 others. The area surrounding the gardens is owned by a general partnership. One general partner who owns 13% of the general partnership proposed to form a limited partnership of his interest and sell limited partnership interests in said general partnership. Pat Tilley proposes to purchase one of those interests which will represent a 1/7 interest in a 13% general partnership interest.

What effect, if any, will said purchase have on Pat Tilley, as a Director of the Mendocino Coast Recreation and Park District? A copy of the Lease between the district and the non-profit corporation is enclosed.

DISCUSSION

The Political Reform Act prohibits a public official from making, participating in, or using her official position to influence a governmental decision in which the official has a financial interest in the outcome. Section 87100. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on certain economic interests including:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103.

Thomas C. Lonergan
June 11, 1985
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If Mrs. Tilley's investment in the partnership which owns the real property would be \$1,000 or more, then she could not participate in, or attempt to influence, any District decisions which could significantly affect the partnership. This would probably include any major decisions concerning the use of the real property now designated as the Mendocino Coast Botanical Gardens. If specific decisions arise in the future concerning the Gardens, I will be happy to provide you with further advice on this point.

I would also like to note that this office does not provide advice concerning Section 1090, et seq. You should examine this law to see if it has any applicability to the situation.

Sincerely,

A handwritten signature in cursive script, reading "Diane Maura Fishburn", with a long horizontal flourish extending to the right.

Diane Maura Fishburn
Counsel
Legal Division

DMF:plh

Thomas C. Lonergan

ATTORNEY AT LAW

P.O. BOX 10 535 CHESTNUT ST.

FORT BRAGG, CA 95437-0010

707 964-6375

May 10, 1985

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

re: Mendocino Coast Recreation and
Park District

Gentlemen:

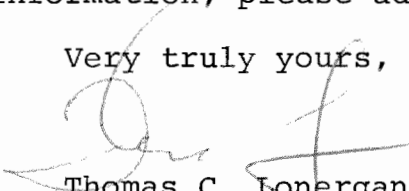
An opinion is requested based upon the following facts: Mrs. Pat Tilley is a Director of the Mendocino Coast Recreation and Park District, a special district organized under the Public Resources Code Section 5780 et seq. In 1981, while Mrs. Tilley was a Director, said district became owners of certain real property by virtue of a Coastal Conservancy Grant, commonly referred to as the Mendocino Coast Botanical Gardens. These gardens were sold by parties who retained ownership of real property surrounding said gardens for future development.

The district leased said gardens to a non-profit corporation, the Mendocino Coast Botanical Gardens Preservation Corporation, which has obtained tax exempt status, both federal and state. Pat Tilley is a Board member of said non-profit corporation with 9 others. The area surrounding the gardens is owned by a general partnership. One general partner who owns 13% of the general partnership proposes to form a limited partnership of his interest and sell limited partnership interests in said general partnership. Pat Tilley proposes to purchase one of those interests which will represent a 1/7 interest in a 13% general partnership interest.

What effect, if any, will said purchase have on Pat Tilley, as a Director of the Mendocino Coast Recreation and Park District? A copy of the Lease between the district and the non-profit corporation is enclosed.

If you need further information, please advise.

Very truly yours,


Thomas C. Lonergan, Attorney
Mendocino Coast Recreation and
Park District

TCL:cac
encls.

LEASE

This Lease Agreement is made on December 1, 1981, by and between Mendocino Coast Recreation and Park District, 213 East Laurel Street, Fort Bragg, California, 95437, hereinafter referred to as Lessor, and Mendocino Coast Botanical Gardens Preservation Corporation, P.O. Box 51, Mendocino, California, 95460, hereinafter referred to as Lessee.

WHEREAS, the State Coastal Conservancy has provided a grant to Lessor to purchase the Mendocino Coast Botanical Gardens and a public pedestrian access easement leading from the Gardens to the coastline of the Pacific Ocean;

WHEREAS, the said access easement and Gardens are located at 18220 North Highway One, Fort Bragg, California, are more particularly described in Exhibit "A", attached hereto and incorporated by reference, and are hereinafter referred to as "the Premises";

WHEREAS, Lessor received the aforesaid grant from the State Coastal Conservancy subject to a condition that the Lessor cause the Premises to be operated and maintained in such a way as to preserve the Gardens and access easement in perpetuity for the use and enjoyment of the public;

WHEREAS, Lessee has the knowledge and expertise required to care for such Gardens;

WHEREAS, Lessee is willing to lease the Premises from Lessor pursuant to the provision stated in this Lease;

WHEREAS, Lessee has examined the Premises and is fully informed of their condition;

NOW THEREFORE: The Parties hereby agree that in consideration for the payment of rent hereinafter specified, and the covenants and conditions herein contained, Lessor leases to Lessee and the Lessee leases from Lessor the Premises and the buildings and other improvements located thereon.

Term

The Premises are leased to Lessee for a term of twenty-five (25) years, commencing on March 1, 1982, or on the date on which Lessor receives fee title to the Premises, if such date is later. If Lessor has not obtained fee title to the Premises by Sept. 1, 1982, this Agreement shall end and become null and void.

Fixed Term - Inability to Deliver Possession

If Lessor is unable to deliver possession of the Premises by the commencement of the Lease term but before Sep. 1, 1982, as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused by failing to deliver possession. Lessee shall not be liable for the payment of any rent until possession is delivered, and the term of the lease shall not be extended by the delay. If Lessor has not delivered possession of the Premises by Sep. 1, 1982 this Lease shall terminate and become null and void.

Rent

Rent for the herein described Premises shall be two thousand dollars (\$2000.00) per year, or two percent (2%) of the gross annual income received by Lessee from said property, whichever is less, but in no event shall the rent be less than six hundred dollars (\$600.00) per year. The maximum rent of two thousand dollars (\$2000.00) shall be adjusted every five (5) years from the date of this Agreement, according to increases or decreases in the United States Department of Labor Consumer Price Index, Western Region, United States for all urban consumers, cities and counties of size class D. The base upon which adjustments shall be made shall be the consumer price index stated above for the nearest month to the date of this Agreement.

Lessee shall provide an annual accounting of gross receipts to the Lessor. If the Lessee fails to provide an annual accounting, the rent

charged shall be the maximum rent allowed under this Agreement, computed according to the index stated above.

A minimum rent of \$50.00 shall be payable monthly, on the last day of the month for which the rent applies, except during the first and last months of this Agreement, when the minimum rent shall be apportioned according to the number of days in the month in which the term of the Lease extends. Underpayment during any calendar year shall be adjusted no later than January 31 of the following calendar year.

Acceptance of Premises

Lessee acknowledges that it enter this Lease fully informed of the condition of the Premises and accepts the Premises as adequate for the purposes for which it is leased.

Covenants

1. Limitations on Use

Lessee agrees to refrain from any activity expressly prohibited in any policy held by Lessor insuring the Premises that will cause a cancellation of the insurance. Lessor agrees to provide Lessee a copy of any insurance obtained no later than 3 weeks after the contract is signed in order to notify Lessee of the terms of the policy.

If the rate of any insurance carried by Lessor is increased as a result of Lessee's use of the Premises, Lessee shall pay to Lessor within 7 days before the date Lessor is obligated to pay a premium on the insurance or within 7 days after Lessor delivers to Lessee a certified statement from Lessor's insurance carrier stating that the rate increase was caused solely by an activity of Lessee on the Premises as permitted in this Lease, whichever date is later, a sum equal to the difference between the original premium and the increased premium.

2. Maintenance

Lessee agrees to repair and maintain the Premises and to pay all repair and maintenance costs. The Premises shall be maintained at a level at least equal to the maintenance level set for the calendar year 1981, as described in Exhibit "B" and may include expenditures for the use of 25 parking spaces near the entrance to the gardens as shown in Exhibit "A". Lessee agrees to submit a budget for the repair and maintenance of the Premises on an annual basis for review and approval by the Board of Directors of the Mendocino Coast Park and Recreation District. Minimum expenditures for maintenance of the Premises shall be adjusted every year from the date of this Agreement, according to increases in the United States Department of Labor Consumer Price Index, Western Region, United States, for all urban consumers, cities and counties of size class D. The base upon which adjustments shall be made shall be the consumer price index stated above for the nearest month to the date of this Agreement.

In the event Lessor is not satisfied with Lessee's repair and maintenance of the Premises, Lessor shall notify Lessee in writing of this fact, specify the activities that need to be performed and demand written assurances that the work will be completed. If such assurances are not received by Lessor within 2 weeks from the postmarked date of the letter to Lessee, Lessor shall be entitled to enter the Premises to perform the work requested, and Lessee shall reimburse Lessor for the use of all of Lessor's equipment and personnel.

3. Surplus/Deficit of Revenue

In the event Lessee's annual fees for admission and access to the Botanical Gardens create a surplus or deficit, after payment of any extraordinary expenses approved by the Board of Directors of the Mendocino Coast Botanical Gardens Preservation Corporation and the Board of Directors of the Mendocino Coast Park and Recreation District,

and after payment of all rent and maintenance costs, allowable items for maintenance being specified in Exhibit "B" attached hereto and incorporated by reference, the fees charged the public for admission and access to the Premises shall be adjusted by the amount of said surplus or deficit. Such fees for admission and access shall be adjusted every year from the commencement of the Lease term based upon the surplus or deficit accumulated over the past year. Attached hereto and labeled Exhibit "C" is a schedule setting forth the admission and access fees to be charged during the first year of the Lease.

4. Alterations

Except as provided above, Lessee shall not make any alterations to the Premises without Lessor's consent. Any alterations including fixtures made on or added to the Premises shall remain on and be surrendered with the Premises on expiration or termination of the term, except that Lessor may elect within 90 days before expiration of the term, to require Lessee to remove any alterations that Lessee has made to the Premises. If Lessor makes such election, Lessee at its cost shall restore the Premises to the condition designated by Lessee before the last day of the term, or within 90 days after notice of such election, whichever is later.

If Lessor makes any alterations to the Premises as provided in this paragraph, the alterations shall not be commenced until 30 days after Lessor has received notice from Lessee stating the date the installation of the alterations is to commence so that Lessor can post and record an appropriate notice of nonresponsibility.

5. Mechanics' Liens

Lessee shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Lease, Lessee shall keep the Premises free and clear of all mechanics' liens resulting from

construction done by or for Lessee. If any such lien is placed on the Premises, however, Lessee shall not be considered to have breached this covenant, if, within 10 days after Lessor's demand, Lessee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to 1-1/2 times the amount of the claim of lien. The bond shall meet the requirements of California Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim, together with costs of suit, if it recovers in the action.

6. Utilities and Service

Lessee shall make all arrangements for and pay for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, telephone service, trash collection and sewage, and all connection charges.

7. Prohibition Against Voluntary Assignment, Subleasing and Encumbering

Lessee shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity except Lessee's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Lessor's written consent. Any assignment, encumbrance, or sublease without Lessor's consent shall be voidable, and the Lessor reserves a power of termination if an assignment or sublease is made without the Lessor's consent. Consent to any assignment, encumbrance, or sublease shall not constitute a waiver of any provisions in this paragraph.

8. Signs; Advertising

Lessee shall have the right to place, construct and maintain on the Premises one or more signs advertising his business, provided that the design, placement and content of the signs is first submitted to

Lessor and approved by him, Lessor's decision shall be based upon the sign's aesthetics, content, and location and shall be made in good faith.

Lessee shall pay all costs associated with such signs. Said signs shall conform to local and state laws and regulations.

9. Attorney's Fees

If either Party commences an action against the other Party arising out of or in connection with this Lease, the prevailing Party shall be entitled to have and recover from the the losing Party reasonable attorney's fees and costs of suit.

Conditions

The Lessee agrees to the following conditions and acknowledges that failure to satisfy such conditions shall constitute a material breach and give Landlord cause to terminate the Lease immediately.

A. To Pay Rent

Lessee agrees to pay rent as provided above.

B. Use of Premises

Lessee agrees to use the Premises to operate a botanical garden including but not limited to the display plants and flowers indigenous and nonindigenous to the Mendocino Coast, and to provide a pathway from the Gardens to the coastline. The Lessee shall not allow or conduct any activity on the Premises that will interfere with such use.

C. To Continue in Business

Lessee agrees to continue operating a botanical garden open to the public over the term of the Lease.

D. Exculpation of Landlord/Indemnity

Lessee agrees that the Mendocino Coast Recreation and Park District is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Lessee,

from any cause or causes other than the Lessor's intentional misconduct while in, upon, or in any way connected with the leased Premises during the term of this Lease or any occupancy hereunder. Lessee agrees to defend, indemnify and save harmless the Mendocino Coast Recreation and Park District from all liability, loss, cost or obligation on account of or arising out of any such injury or loss.

E. Public Liability and Property Damage Insurance

Lessee agrees to furnish to Lessor evidence of insurance with limits of bodily injury of not less than \$_____ for one person and \$_____ for each occurrence and with limits of property damage liability of not less than \$_____ for each occurrence or a combined single limit policy of not less than \$_____ naming the Mendocino Coast Park and Recreation District, its officers, agents and employees as additional insureds, and providing that the policy shall not be cancelled without fifteen (15) days prior written notice to Lessor. It is agreed that the Lessor shall not be liable for the payment of any premiums or assessments on the insurance coverage required by this paragraph. Lessee agrees that the insurance coverage shall be in effect at all times during the term of this Lease; Lessee agrees to provide to the Lessor, at least fifteen (15) days prior to said expiration date, new evidence of insurance coverage as provided for herein for not less than one year.

F. Non-Discrimination

Lessee agrees by and for himself, his heirs, executors, administrators and assigns and all persons claiming under or through it, as follows: that there shall be no discrimination against or

segregation of any person or group of persons on account of race, color, creed, national origin, sex, age, marital status or ancestry in the subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the Lessee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of sublessees, subtenants or vendees in the Premises herein leased.

Notices

All notices under this Agreement shall be mailed to the other Party by certified mail, return receipt requested, at the recipient's address set forth above.

Interpretation of Lease

This Lease shall be construed and interpreted in accordance with the Laws of the State of California.

Binding Upon Successors

The rights and obligations established shall bind and inure to the benefit of the Parties to this Agreement, and their respective heirs, legatees, devisees, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease Agreement on the date set forth above.

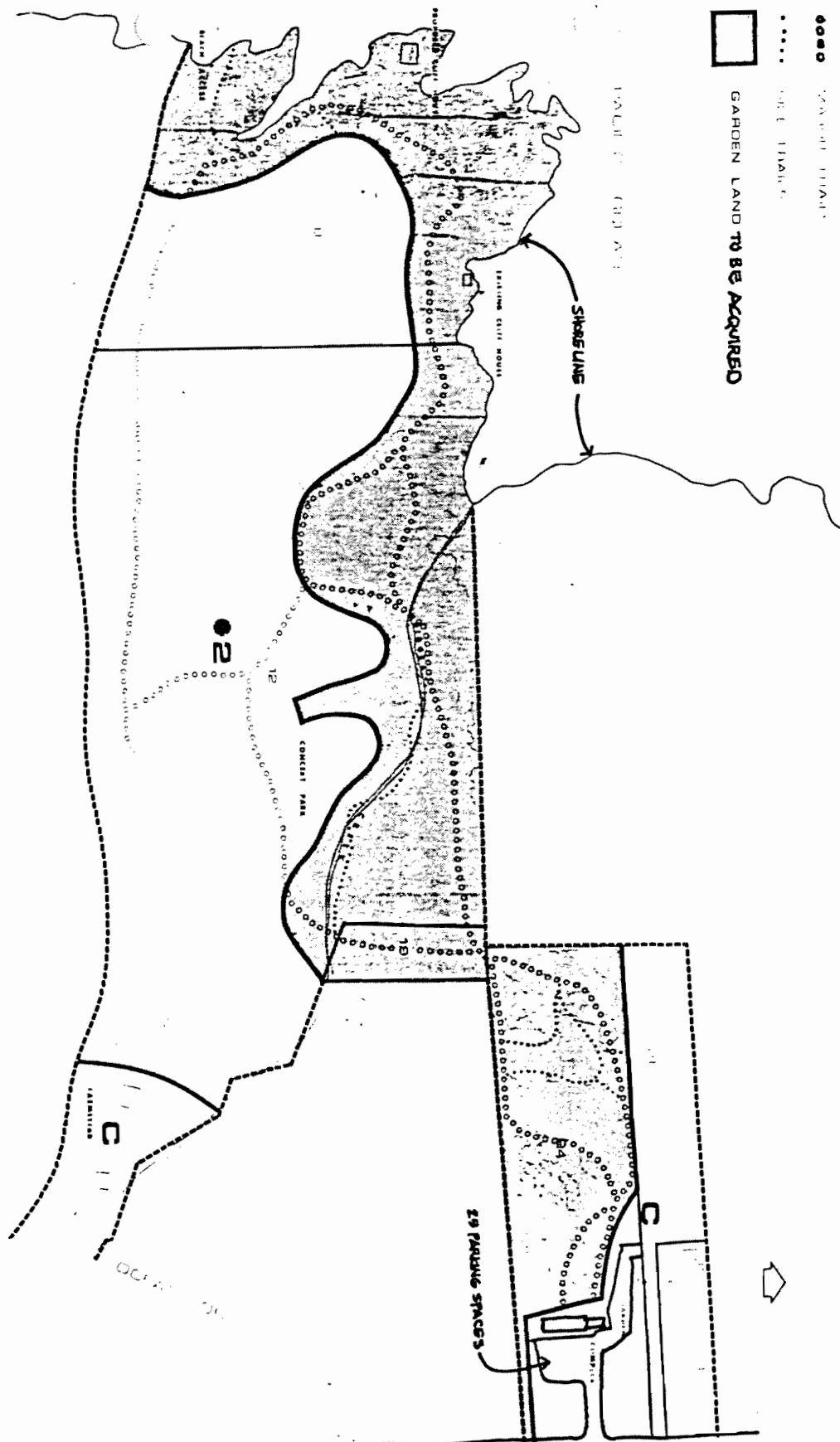
Mendocino Coast Recreation
and Park District

by David A. Lewis
Lessor

Mendocino Coast Botanical
Gardens Preservation Corporation

by _____
Lessee

SCALE 1" = 100'



MENDOCINO COAST BOTANICAL GARDENS - Exhibit A



18220 N. Highway One, Fort Bragg, CA 95437 707-964-4352

MAINTENANCE SCHEDULE

Spring Schedule (March - June)

- (1) Fertilizing:
 - A. Rhododendrons before spring bloom.
 - B. Turf areas; 1-2 lbs./100 sq. ft. every 6 weeks when turf begins to grow.
 - C. Perennials and annuals; 1 lb./100 sq. ft.
- (2) Mowing:
 - A. Front area, turf walkways, meadow area and concert area.
 - B. As needed thru spring, areas should be kept 2-3 inches high.
- (3) Weeding:
 - A. Weeding by hand or use of herbicides.
 - B. Roundup herbicide should be used on perennial weeds.
 - C. Weeding is to be practiced in all ornamental planting beds.
- (4) Mulching:
 - A. As needed to keep annual weeds from growing.
 - B. Mulch should be 3-4 inches deep.
- (5) Pinching rhododendrons:
 - A. All rhododendrons should be pinched that have bloomed and are now showing decline.
- (6) Watering:
 - A. Turf areas should receive watering twice weekly if no rains have occurred.
 - B. Turf should receive 4 inches of water weekly.
 - C. Planting beds should receive water as needed.
- (7) Pruning:
 - A. Heavy pruning
 - B. Pinching and shaping on many shrubs is ok now.
- (8) Facility maintenance:
 - A. Cliff house and restrooms should be cleaned twice weekly.

EXHIBIT "B"



18220 N. Highway One, Fort Bragg, CA 95437 707-964-4352

Summer schedule (June - Sept.)

- (1) Fertilizing:
 - A. Rhododendrons (Same as spring)
 - B. Turf areas (Same as spring)
 - C. Perennials and annuals to be fertilized as new growth appears; 1 lb./100 sq. ft. .
- (2) Mowing:
 - A. Turf areas (Same as above)
- (3) Weeding:
 - A. Planting beds (Same as above)
- (4) Mulching :
 - A. Same as above.
- (5) Pinching Rhododendrons:
 - A. Same as above.
- (6) Watering:
 - A. Same as above.
- (7) Pruning:
 - A. No pruning thru summer.
- (8) Facility maintenance:
 - A. Cliff house and restrooms should be cleaned every day thru summer.
- (9) Trail maintenance:
 - A. Pea gravel trails should be raked and leveled throughout summer.
 - B. Pea gravel should be added so as to keep bare spots from occurring.
 - C. Paved trails should receive a raking and sweeping at least once a month thru summer.
 - D. Turf pathways should be edged as needed.
- (10) Perennial maintenance:
 - A. Perennials should be cut back after flowering to promote new growth.

EXHIBIT "B"



18220 N. Highway One, Fort Bragg, CA 95437 707-964-4352

Fall schedule (Sept. - Dec.)

- (1) Fertilizing:
 - A. Turf (Same as above as needed)
 - B. Perennials and annuals as needed
- (2) Mowing:
 - A. Turf areas (Same as above)
- (3) Weeding:
 - A. Planting beds (Same as above)
- (4) Mulching:
 - A. Same as above.
- (5) Pinching Rhododendrons :
 - A. No pinching necessary thru fall.
- (6) Watering:
 - A. Same as above.
- (7) Pruning:
 - A. Heavy pruning (Tree removal is advised at this time)
- (8) Facility maintenance :
 - A. Cliff house and restrooms should be cleaned twice weekly.
- (9) Trail maintenance:
 - A. Same as above.
- (10) Perennial maintenance:
 - A. Same as above.
- (11) Planting:
 - A. If planting is to take place now is the time for this.



18220 N. Highway One, Fort Bragg, CA 95437 707-964-4352

Winter Schedule (Dec. - March)

- (1) Fertilizing:
 - A. Rhododendrons should be fertilized at this time.
 - B. Turf areas will not need fertilizing at this time.
 - C. Perennials and annuals will not need fertilizing at this time.
- (2) Mowing:
 - A. No mowing at this time.
- (3) Weeding:
 - A. Planting beds (Same as above)
- (4) Mulching :
 - A. Same as above..
- (5) Pinching Rhododendrons :
 - A. All rhododendrons should be pinched that have bloomed and are now showing decline.
- (6) Watering:
 - A. No watering is needed at this time.
- (7) Pruning:
 - A. Heavy pruning.
 - B. Pinching and corrective pruning is now advised.
- (8) Facility maintenance:
 - A. Same as Fall.
- (9) Trail maintenance:
 - A. Not needed at this time.
- (10) Perennial maintenance:
 - A. Same as above.

Exhibit c

~~EXHIBIT "B"~~

USER FEE SCHEDULE

\$3.00	Adults
1.50	Teens (13 - 18)
-0-	Children, 12 and under accompanied by an adult
2.50	Per person, scheduled tour groups
2.50	Senior citizens
.75	Per person, Educational groups (Instructors free)
1/2 off	Local residents with proof of residency

Tenant shall supply Landlord with quarterly
income statements.

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 15, 1985

Thomas C. Lonergan
Attorney at Law
P.O. Box 10
Fort Bragg, CA 95437-0010

Re: A-85-110

Dear Mr. Lonergan:

Your letter, dated May 10, 1985, requesting advice under the Political Reform Act has been referred to Diane Fishburn, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Barbara A. Milman

Barbara A. Milman
General Counsel

BAM:plh
cc: Pat Tilley